No. 376.

Motion &c. No. 376 D. C. to advance

Filed Oct. 11, 1897.

IN THE

Supreme Court of the United States.

W. W. BAUGHN, next friend of Elizabeth Nobles,

Plaintiff in Error,

vs.

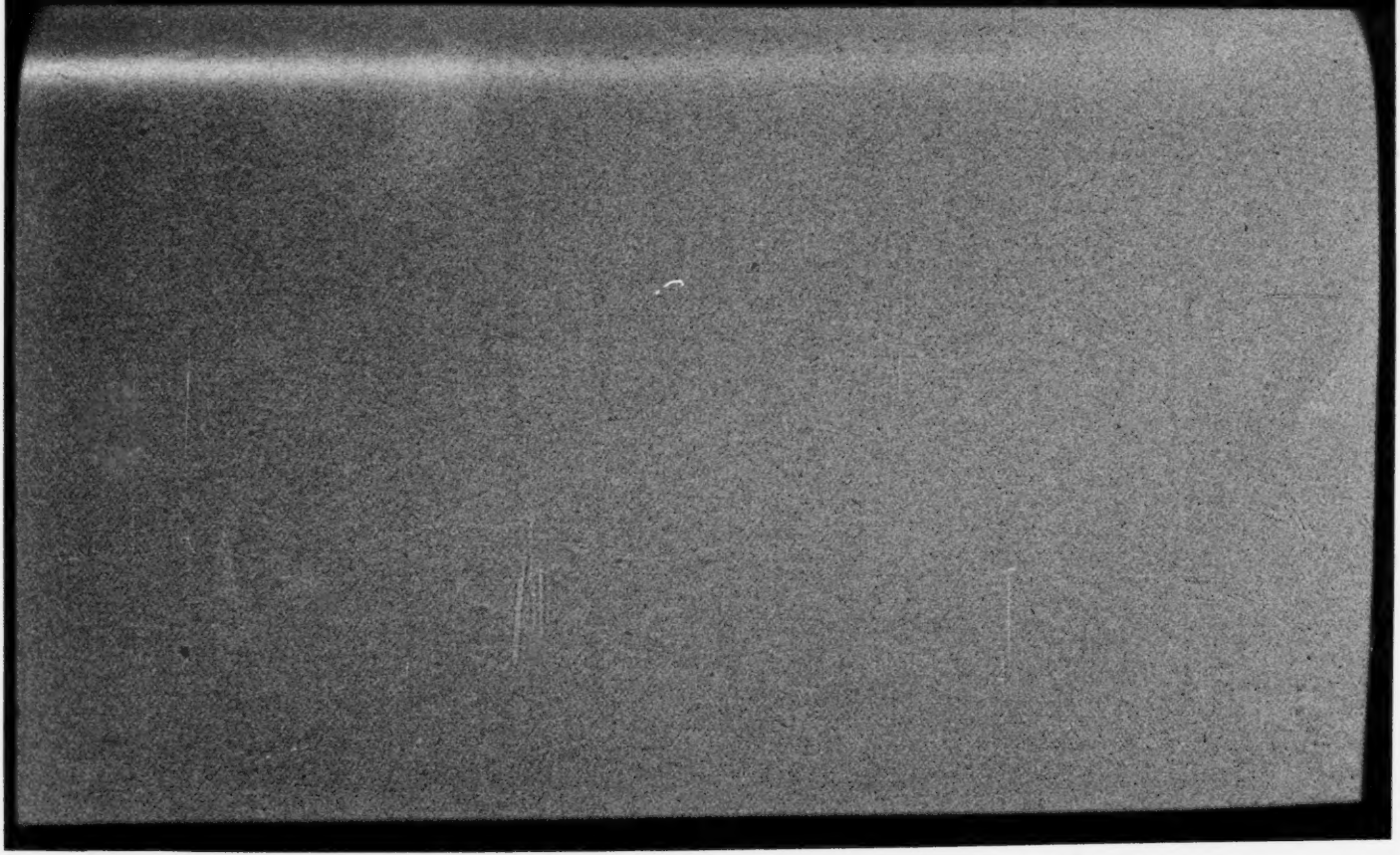
THE STATE OF GEORGIA, Defendant in Error.

MOTION TO ADVANCE.

J. M. TERRELL,

Counsel for Defendant in Error.

ATLANTA, GA.:
GEO. W. HARRISON, STATE PRINTER,
Franklin Printing and Publishing Company.
1897.



UNITED STATES OF AMERICA.

To the Honorable Supreme Court of the United States:

At a special term of the Superior Court of Twiggs County, Georgia, held on the 9th, 10th and 11th days of July, 1895, Elizabeth Nobles was tried for the offense of murder, and was convicted therefor and sentenced to death. A motion for a new trial upon several grounds, including that of insanity at the time of the commission of the crime for which she was indicted, was made, and the same was refused by said Superior Court and the case was then taken by writ of error to the Supreme Court of Georgia, pending which the said sentence was suspended as provided by the laws of that State. After the trial, conviction and sentence as aforesaid, the Judge of said Superior Court passed an order directing the Sheriff of Twiggs County to remove said Elizabeth Nobles from the common jail of Twiggs County and place her in the common jail of Bibb County, Georgia, for safe keeping, to answer the judgment and sentence of Twiggs Superior Court. In accordance with this order, S. E. Jones, Sheriff of Twiggs County, placed her in the common jail of Bibb County, R. Hines Millirons being the jailer and G. S. Westcott being the Sheriff of said County of Bibb.

On the 13th day of January, 1896, the Supreme Court of Georgia disposed of the said case by affirming the judgment of the Superior Court of Twiggs County therein. On the 18th day of January, 1896, T. W. Loyless, Asher Engle and W. W. Baughn, citizens of Bibb County, Georgia, presented to the Ordinary of that County a petition alleging that said Elizabeth Nobles was insane, and praying that a commission of lunacy be issued by him to try and deter-

mine the question of her sanity. This petition was refused by said Ordinary, and W. W. Baughn then applied to the Superior Court of Bibb County for a writ of *mandamus* requiring and demanding said Ordinary to issue said commission of lunacy. Upon the hearing of this application for *mandamus*, the Superior Court of Bibb County refused to grant same, and an appeal was then taken from the judgment refusing same to the Supreme Court of Georgia, where the judgment of the Court below was affirmed.

On January 23rd, 1896, W. W. Baughn as next friend of Elizabeth Nobles filed in the Circuit Court of the United States for the Southern District of Georgia, sitting in the Western Division, an application for writ of *habeas corpus* against said Hines Millirons, jailer of Bibb County, G. S. Westcott, Sheriff of Bibb County, and S. E. Jones, Sheriff of Twiggs County, alleging therein that said Elizabeth Nobles was in their custody and control and was insane, and that she was about "to be sentenced to death and about to be executed and deprived of life without due process of law and in violation of the 14th amendment to the Constitution of the United States." On the 4th day of February, 1896, Hon. Emory Speer, Judge, presiding in said case, ordered and adjudged that said petition be dismissed and the writ issued thereon be discharged. From this judgment an appeal was taken to this Honorable Court, and on May 4, 1896, the said case, which was No. 927, October Term, 1895, was dismissed pursuant to the 10th Rule.

On the 23rd day of June, 1896, the said Elizabeth Nobles was carried before the Superior Court of Twiggs County, Georgia, for the purpose of being sentenced to death, as provided by the laws of the State of Georgia, and when said case was called for that purpose, W. W. Baughn, as next friend of Elizabeth Nobles, presented his petition to said Superior Court, objecting to the imposing of the sentence for the following reasons, to wit:

1. Because she is now insane.

2. Being now insane, it is contrary to the policy of the law and is illegal that the sentence of death should be imposed upon her, as "due process of law" under the 14th amendment to the Constitution of the United States means law in its regular course of administration through the courts of justice, and that the same had been denied to her.

Said petition concluding with the prayer that the Court summon and impanel a jury to try and determine the question as to the sanity of said Elizabeth Nobles. After argument upon said petition and motion, the Court then and there passed an order denying and overruling same upon each and every ground therein taken, and denying and refusing the prayer thereof, to which ruling, order and judgment of the Court the petitioner excepted, and notwithstanding said objections sentenced said Elizabeth Nobles to be executed on August 7th, 1896. After said sentence was imposed, and at the same term of the Court, said Baughn, as next friend of Elizabeth Nobles, presented to the Court another petition upon grounds similar to those stated in the petition above set forth, praying that the sentence of death should not be executed. This petition or motion was likewise overruled and to this ruling or judgment petitioner also excepted. A bill of exceptions to said judgments was then presented to the Judge of said Court, which was properly certified, and the case was then taken to the Supreme Court of Georgia as provided by law, pending the hearing of which a *supersedeas* as to said sentence was granted by the Court.

On May 12th, 1897, the Supreme Court of Georgia disposed of said case by affirming the judgment of the Court below, as follows:

"W. W. Baughn, next friend, *v.* the State. By the Court, per Cobb, Justice.

"1. There is no law of force in this State which makes it incumbent upon a Judge of the Superior Court at the time when judgment is to be entered, or after it has been entered, to allow, or order, a judicial investigation concerning the mental condition of one against whom a lawful verdict of guilty has been rendered in a capital case and who has thereby become subject to the penalty of death; nor in either instance is a refusal by such Judge to enter upon an investigation of this kind, with or without the aid of a jury, a denial to the prisoner of 'due process of law.'

"2. The provisions of the Code relating to inquisitions in such matters are sufficiently comprehensive to cover all cases where the alleged insanity begins at any time after the rendition of the verdict of guilty.

"Judgment affirmed.

"All the Justices concurring."

Said Baughn as next friend of Elizabeth Nobles then applied to this Honorable Court for a writ of error to be directed to the Supreme Court of Georgia requiring said Supreme Court to certify and send up all the records and proceedings in said case of W. W. Baughn as next friend of Elizabeth Nobles *v.* the State of Georgia, to the end that justice may be done therein, upon the ground amongst others that due process of law was denied the said Elizabeth Nobles upon the question of her insanity, and that the judgment of the Supreme Court of Georgia denied to her the rights guaranteed by the 14th amendment to the United States Constitution, which writ of error was duly issued and served, and is now pending in this Honorable Court.

And now comes Joseph M. Terrell, Counsel for Defendant in Error, the State of Georgia, and applies to have said case advanced on the docket and heard at this term of the Court for the following reasons:

First, Because pending said writ of error no proceedings can be had or taken by the officers of the State of Georgia charged with the duty of executing the criminal laws of that State against said Elizabeth Nobles under said verdict in Twiggs Superior Court finding her guilty of murder and the sentence of the Court thereon.

Second, Because the laws of the State of Georgia against murder cannot be enforced as to said Elizabeth Nobles until said writ of error is disposed of and the questions arising thereunder determined.

Third, Because an early decision of the said case will save much expense to the parties litigant, and especially to the tax-payers of the State of Georgia, as the said Elizabeth Nobles is confined in jail under a verdict finding her guilty of murder, and therefore not bailable and will be so confined until said writ of error is disposed of.

Fourth, Because the pending of said writ of error greatly obstructs and embarrasses the State of Georgia and the officers thereof in the enforcement of the laws of said State against the crime of murder.

Fifth, Because the questions involved in said case are believed to be of public interest to the States and people generally.

For the foregoing reasons, said Defendant in Error prays the Court to advance said case so pending in this Court, and to appoint a day during the present Term for the hearing of same.

Respectfully submitted,

J. M. TERRELL,

Counsel for Defendant in Error.

Due and legal service of the above and foregoing motion to advance the case of W. W. Baughn, next friend of Elizabeth Nobles, *v.* the State of Georgia, pending in the Supreme Court of the United States, is hereby acknowl-

edged and copy of same and all further service of notice relative thereto waived, and I hereby consent for said motion to be presented at any time counsel for Defendant in Error may see proper.

This the 28th day of September, 1897.

W. C. GLENN,
Counsel for Plaintiff in Error.

No. 376.

Motion to Proceed in Forma Pauperis.

Filed Oct. 28, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 376.

ELIZABETH NOBLES, BY HER NEXT FRIEND, W. W. BAUGHN, PLAINTIFF IN ERROR,

vs.

STATE OF GEORGIA, DEFENDANT IN ERROR.

ERROR FROM THE SUPREME COURT OF GEORGIA.

Motion for Leave to Proceed in Forma Pauperis, and that Record be Printed at Public Expense.

W. C. GLENN,
MARION W. HARRIS,
Counsel for the Plaintiff in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 10-29-'97

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 376.

ELIZABETH NOBLES, BY HER NEXT FRIEND, W. W. BAUGHN, PLAINTIFF IN ERROR,

vs.

STATE OF GEORGIA, DEFENDANT IN ERROR.

ERROR FROM THE SUPREME COURT OF GEORGIA.

Motion for Leave to Proceed in Forma Pauperis, and that Record be Printed at Public Expense.

And now comes W. W. Baughn and represents to the Court that because of his poverty he is unable to pay the costs for the printing of the record and to pay the other costs in said proceeding, and that the said Elizabeth Nobles, because of her poverty, is unable to pay the costs, and that the facts of her case are fully set forth in the record now of file in the above-stated cause.

Wherefore he prays the Court that he be allowed to pro-

ceed therein *in forma pauperis* and without the payment of any costs.

W. C. GLENN,
MARION W. HARRIS,
Counsel for the Plaintiff in Error.

STATE OF GEORGIA, }
County of Bibb. }

In person comes Marion W. Harris, who, being duly sworn the truth to speak, now upon his oath says:

That he is of counsel in the above-stated case; that he well knows the said W. W. Baughn and the said Elizabeth Nobles; that the said Elizabeth Nobles is an absolute pauper, and that the said W. W. Baughn has no means within affiant's knowledge, and that to the best of his knowledge and belief the facts stated in the foregoing motion are true.

MARION W. HARRIS.

Sworn to and subscribed before me this 26th day of October, 1897.

[SEAL.] W. H. EZELL,
Notary Public, Bibb County, Ga.

[Endorsed:] Case No. 16,589. Supreme Court U. S., October term, 1897. Term No., 376. Elizabeth Nobles, by her next friend, W. W. Baughn, P. E., *vs.* The State of Georgia. Motion for leave to proceed *in forma pauperis*, and that record be printed at public expense. Filed Oct'r 28, 1897.